

## ALBERT FERGUSON AND OZELLE FERGUSON

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OCTOBER 28 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

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Mr. ROBERTSON, from the Committee on Claims, submitted the following

## REPORT

[To accompany H. R. 1973]

The Committee on Claims, to whom was referred the bill (H. R. 1973) for the relief of Albert Ferguson and Ozelle Ferguson, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 6, strike out the figures "\$2,500" and insert in lieu thereof "\$3,500".

The facts will be found fully set forth in House Report No. 656, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report.

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[H. Rept. 656, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 1973) for the relief of Albert Ferguson and Ozelle Ferguson, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 6, strike out "\$5,000" and insert in lieu thereof "\$2,500".

The purpose of the proposed legislation is to pay to Albert Ferguson and Ozelle Ferguson, Joe Wheeler Dam, Ala., the sum of \$2,500, in full settlement of all claims against the United States for the death of their minor child, Doris Ann Ferguson, on June 22, 1942, caused by being run over by a truck of the Tennessee Valley Authority.

## STATEMENT OF FACTS

On June 22, 1942, at about 9:15 a. m., Doris Ann Ferguson, 18-month-old child of Albert Ferguson and Ozelle Ferguson, was run over and killed by one of the trucks of the Tennessee Valley Authority. The Fergusons occupied one of the Authority's houses at Joe Wheeler Dam. The truck which killed the Ferguson child was driven by William Porter Perry and was engaged in the collection of garbage from the Ferguson house at the time of the accident. Mr. Perry drove up to the garbage can, which was located about 25 feet west of the northwest



corner of the house. He had seen Mrs. Ferguson and her daughter in the yard but, in backing the truck around, he ran into and killed the child.

Liability of the Government is admitted in the report of the Chairman of the Tennessee Valley Authority, who concludes, in pertinent part:

"Our general counsel advises me that there is no question but that Doris Ann Ferguson's death resulted from the negligence of the Authority's driver and that if suit were maintainable against the Authority under the Alabama statute, it would probably result in a substantial recovery."

Your committee agree, feeling that the Government driver was negligent in backing the truck without ascertaining whether there were persons behind it, especially since he had shortly before seen the child in and about the truck. No negligence can be imputed to the child which was only 18 months old.

Complying with the suggestion of the Authority, your committee have amended the bill so as to pay the parents of the child \$2,500, which is considered fair and reasonable, instead of \$5,000, for which it was introduced.

Your committee, therefore, recommend favorable consideration of the proposed legislation.

Appended hereto is the report of the Tennessee Valley Authority, together with a statement by the truck driver and a statement of the mother of the child, all of which is made a part of this report.

TENNESSEE VALLEY AUTHORITY,  
Knoxville, Tenn., June 10, 1943.

HON. DAN R. McGEHEE,  
*Chairman, Committee on Claims,  
House of Representatives, Washington, D. C.*

MY DEAR MR. McGEHEE: This is in reply to your letter of April 26 to Miss Marguerite Owen, the Authority's Washington representative, requesting a report on H. R. 1973—a bill for the relief of Albert and Ozelle Ferguson.

The facts of the case are as follows: On June 22, 1942, at about 9:15 a. m., Doris Ann Ferguson, 18-month-old child of Albert and Ozelle Ferguson, was run over and killed by one of the Authority's trucks. The Fergusons occupied one of the Authority's houses at Wheeler Dam. The truck which killed the Ferguson child was driven by William Porter Perry, and was engaged in the collection of garbage from the Ferguson house at the time of the accident. Mr. Perry drove up to the garbage can, which was located about 25 feet west of the northwest corner of the house. He had seen Mrs. Ferguson and her daughter in the yard but, in backing the truck around, he ran into and killed the child. Copies of statements of Mrs. Ferguson and Mr. Perry are attached.

It is the opinion of the Authority's general counsel that the Authority cannot legally be made to respond in damages for the death of the child. There is no common-law liability for wrongful death, and the Alabama wrongful-death statute (Alabama Code (1940) title 7, sec. 123) is punitive in nature, since the amount of the recovery is measured by the negligence of the defendant and not by the damages suffered by the plaintiff. In the unreported case of *McAdams v. Tennessee Valley Authority*, the District Court of the United States for the Northern District of Alabama held that the Tennessee Valley Authority could not be held liable for wrongful death. This decision is based primarily on the following precedents: *Missouri Pac. R. R. Co. v. Ault* (256 U. S. 554, 1921), *Norfolk-Southern R. R. Co. v. Owens* (256 U. S. 565, 1921), *Howard v. Davis* (209 Ala. 113, 95 So. 354 (1923)), *Heidtmueller v. Davis* (210 Ala. 548, 98 So. 791, 1924)).

Our general counsel felt, however, that the Authority could justify reimbursing the Fergusons for the immediate financial loss involved, including funeral expenses, etc., and accordingly offered to settle the claim for \$375. This offer was accepted, and a release was executed.

A draft in the amount of \$375 was issued to Albert and Ozelle Ferguson, but this draft was never cashed. On October 6, 1942, Mr. and Mrs. Ferguson advised us that they did not intend to cash the draft and that they expected a further settlement. A copy of this letter is attached. By letter dated October 13 the Authority's general counsel advised Mr. and Mrs. Ferguson that the Authority was not legally responsible but that it would not hold them to the release which was executed if they preferred not to cash the draft. The draft was subsequently returned, and both the draft and the release were canceled.

Our general counsel advises me that there is no question but that Doris Ann Ferguson's death resulted from the negligence of the Authority's driver and that



if suit were maintainable against the Authority under the Alabama statute, it would probably result in a substantial recovery.

This report has been cleared with the Bureau of the Budget, and the Director has advised us that if the bill were amended so as to provide for the payment of a sum of not more than \$2,500 to Albert Ferguson and Ozelle Ferguson in full settlement of their claim against the United States and the Tennessee Valley Authority for the death of their minor child, Doris Ann Ferguson, the proposed legislation would be in accord with the program of the President.

Sincerely yours,

DAVID E. LILIENTHAL,  
*Chairman.*

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WILLIAM PORTER PERRY'S STATEMENT OF THE ACCIDENT AT WHEELER DAM ON  
JUNE 22, 1942, INVOLVING THE DEATH OF DORIS ANN FERGUSON, AGE 18  
MONTHS

STATE OF ALABAMA,  
*Lawrence County, ss:*

On the morning of June 22, 1942, about 9:15, I went to House No. 61, Wheeler Dam, Ala., occupied by Albert Ferguson, to collect garbage. I drove up to the garbage can, which is located about 25 feet west of the northwest corner of the house. At the time I drove up, Mrs. Ferguson was at the chicken house, which is located approximately 40 feet back of the residence. As I stopped, Mrs. Ferguson came from the chicken house up to the northwest corner of the residence, and I came around to the front of the Tennessee Valley Authority No. 708 half-ton pick-up truck, which I was driving. Doris Ann Ferguson, age 18 months, was with her mother at the time. After speaking to Mrs. Ferguson, I picked up a cardboard box from the garbage can near the house and took it to one of the containers in the truck. As I got in the truck to leave, I heard Mrs. Ferguson call to Doris to come to her. At this time, Mrs. Ferguson was standing about 15 or 20 feet in front of and to the right of the truck, Doris being within 4 feet of her, and had started toward the back of the house. I had backed the truck about 6 or 7 feet when I felt something bump it. The child had been hit on the right side of the truck. I stopped immediately and, upon looking in front of the truck, could see Doris lying on the ground, face down. I got out of the truck, picked the child up and handed her to Mrs. Ferguson. She was going to take the child to a doctor, but I suggested that she stay there and I would get the doctor to her. I came back to the Service Building, told Mr. Ferguson what had happened, and then put in a call for the doctor.

WILLIAM P. PERRY.

Subscribed and sworn to before me, J. H. Highsmith, coroner for Lawrence County, this 22d day of June 1942.

J. H. HIGHSMITH, *Coroner.*

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MRS. ALBERT FERGUSON'S STATEMENT OF THE ACCIDENT AT WHEELER DAM  
ON JUNE 22, 1942, INVOLVING THE DEATH OF HER CHILD, DORIS ANN FERGUSON,  
AGE 18 MONTHS

STATE OF ALABAMA,  
*Lawrence County, ss:*

On the morning of June 22, 1942, about 9:15 a. m., I saw Mr. Perry drive up to the northwest corner of my house in the Tennessee Valley Authority pick-up truck. At the time Mr. Perry drove up, I was standing about 60 feet from the northwest corner of the house. When Mr. Perry stopped the truck at the northwest corner of the house, near the garbage can, I then walked over near the right side of the truck, and Doris Ann was with me.

Mr. Perry got out of the truck and gave me a dog which my husband had asked him to bring to the house. As I started into the house to get some food for the dog, I called the dog and told Doris Ann to come with me. The last time I saw Mr. Perry before the accident, he was either in the truck or getting into the truck to leave. I had started out of the house when I heard the baby crying. I then ran from the house to see what had happened. Mr. Perry had the baby in his



arms when I arrived and she was crying. I asked him what had happened, and he stated that he had run over the child with the truck. Mr. Perry handed the child to me and said he would go to the Service Building and tell Mr. Ferguson about the accident and call the doctor.

OZELLE (Mrs. Albert) FERGUSON.

Witness:

JOHN P. WATKINS.

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